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In re Application of
MUELLER et al.
U.S. Application No. 09/856,912
PCT No.: PCT/DE00/03384
Int. Filing Date: 28 September 2000
Priority Date: 30 September 1999
Attorney Docket No.: R36127
For: METHOD FOR OPERATING A MIXED-
POTENTIAL EXHAUST-GAS PROBE
AND CIRCUIT ARRANGEMENTS FOR
CARRYING OUT THE METHODS

DECISION ON PETITION

This decision is in response to applicants' "Petition to Revive under 37 CFR 1.137(b) to Revive Application for Patent Abandoned Unintentionally" and "Petition under 37 CFR 1.497(d) to Correct Inventorship" filed 28 May 2002.

BACKGROUND

On 28 September 2000, applicants filed international application No. PCT/DE00/03384 which claimed a priority date of 30 September 1999 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 05 April 2001. The international application named Bernd Mueller; Thomas Brinz; and Bernd Schumann as applicants/inventors. A Demand for international preliminary examination was filed not prior to 19 months from the priority date. Accordingly, the twenty-month period for paying the basic national fee expired at midnight on 30 May 2001.

On 30 May 2001, applicants filed a transmittal letter for entry into the national stage accompanied by, *inter alia*: the requisite basic national fee; a copy of the international application; and an unexecuted declaration.

On 11 July 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) and a Notification of Defective Response (Form PCT/DO/EO/916) indicating that an oath or declaration in compliance with 37 CFR 1.66 or 1.68 was required. The notification set a two-month time limit in which to respond.

On 23 August 2001, applicants filed a declaration and power of attorney executed by Bernd Mueller; Thomas Brinz; Bernd Schumann; and Bernhard Bloemer.

On 15 November 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that an oath

or declaration in compliance with 37 CFR 1.66 or 1.68 was required.

On 30 November 2001, applicants filed "Response to Notification of Defective Response" which indicated that the declaration filed 23 August 2001 was in compliance with 37 CFR 1.66 or 37 CFR 1.68.

On 28 May 2002, applicants filed the present petition under 37 CFR 1.137(b) and 37 CFR 1.497(d).

On 04 June 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the declaration was defective because the fourth inventor (Bernhard Bloemer) was not listed on the international application.

DISCUSSION

The above-identified application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 11 July 2001, in that, the declaration was not in compliance with 37 CFR 1.497(a) and (b).

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional delay must be accompanied by: (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). Applicants have satisfied Items (2)-(4).

In order to comply with the proper reply requirement of item (1) above for revival under 37 CFR 1.137(b), applicant submitted the present Petition Under 37 CFR 1.497(d). Under the present circumstances, in order for the reply requirement, item (1) above, to be satisfied, the submission under 37 CFR 1.497(d) to add inventor Bernhard Bloemer must be grantable.

In the instant case, the international application named Bernd Mueller; Thomas Brinz; and Bernd Schumann as applicants/inventors. Applicants request to add Bernhard Bloemer as applicant/inventor. In order to correct an error in naming the inventor(s) made during the international stage in the national stage, a submission under 37 CFR 1.497(d) is required.

A submission under 37 CFR 1.497(d) to correct an error in naming inventorship requires:

- (1) a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part;
- (2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.497(a);

- (3) the fee set forth in 37 CFR 1.17(i); and
- (4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b).

Applicants have satisfied items (1), (2) and (3).

In regard to item (4) above, the written consent of the assignee is executed by Dr. Gunnar Lochmahr, Patent Counsel for Robert Bosch, GmbH, which avers that "the undersigned is empowered to act on behalf of the assignee. Therefore, applicants have satisfied item (4).

CONCLUSION

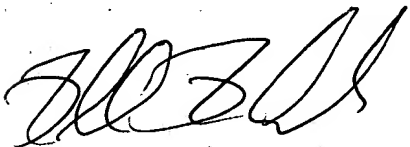
For the reasons discussed above, applicants' request under 37 CFR 1.137(b) is **GRANTED**.

The submission under 37 CFR 1.497(d) is **GRANTED**.

The Notification of Defective Response (Form PCT/DO/EO/916) mailed 04 June 2002 is hereby withdrawn.

A review of the application papers reveals that applicant completed all the requirements of 35 U.S.C. 371 for entry into the national stage. This application will be given an international application filing date of 28 September 2000 and a date of **23 August 2001** under 35 U.S.C. 371.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.



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